

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 209 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI HARIBHAI PATEL

Versus

SURAT ELECTRICITY CO.LTD.

Appearance:

MS KJ BRAHMBHATT for Petitioner
MR CJ VIN for Respondent No. 2
Respondent No.2 is deleted

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 07/03/96

ORAL JUDGEMENT

1. RULE. Mr. C.J. Vin appears and waives service of Rule on behalf of power of attorney holder Manubhai Nagjibhai Patel, Respondent No.2. Respondent No.1 being not necessary party to the present proceeding is permitted to be deleted. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. In the suit filed by the petitioner plaintiff, the respondent No.2 namely Chimanbhai Rathanbhai Patel through his power of attorney holder Manubhai Nagjibhai Patel applied for being impleaded as party in the suit which was initially instituted against Surat Electricity Company Limited. Such application was given on 4th of July, 1995 and the trial court has vide order below Exhibit 25 granted such application permitting the respondent No.2 being impleaded as party defendant No.2 to the suit.

3. However, before the trial court as well as before this Court it is pointed out that the third party, namely, Chimanbhai Ratanji Patel, who was claiming to be the party interested and on whose behalf his power of attorney has applied for being impleaded as a party defendant, has expired on 18th September, 1989 and therefore the power of attorney which was executed on 25th August, 1988 by Chimanbhai Rathan Patel can no longer operate. The author power of attorney holder himself has expired and automatically therefore the powers conferred upon him as power of attorney holder would come to an end with the death of the executant. Despite this fact having been pointed out to the trial court, the trial court has without even referring to such important fact passed absolutely cursory order on 18th January 1996 granting the application and joining the third party as defendant No.2 to the suit. The application itself was not maintainable when it was contended that the power of attorney holder has no authority whatsoever to tender any application since the author of the document was already dead, the document has become infructuous in every sense. The trial court ought to have in fact referred to such important evidence and ought to have decided such evidence, the trial court failed in its duty and has passed a very perfunctory and highly unsatisfactory order which requires condemnation of this court and it is condemned and trial judge is directed to observe the provision of law in future and not to pass some such absolutely illegal and laconic order. The order passed by the trial judge dated 18th January, 1996 is hereby quashed and set aside. The Registrar of this Court is directed to communicate the copy of this order to Civil Judge, Senior Division, Surat, who has passed the impugned order dated 18th January 1996. Rule is accordingly made absolute. There shall be no order as to costs.
